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May 11, 1994

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Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and eleven (11) copies of its "Reply to Opposition of WII."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 
Stephen T. Yelverton

Enclosure

B:CATON.137

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: The Review Board

REPLY TO OPPOSITION OF WII

Respectfully submitted,

MCHAIR & SANFORD, P.A.

By: _____

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May 11, 1994

B:CATON.137

REPLY TO OPPOSITION OF WII

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.229 (d) and 1.294 (c)(1) of the Commission's Rules, hereby submits this reply to opposition. On April 21, 1994, ORA filed a supplement to a motion to enlarge the issues against Wilburn Industries, Inc. ("WII"). On May 3, 1994, WII filed an opposition thereto. In reply to the opposition, ORA submits the following comments.

WII previously disclosed during discovery in this proceeding that it had received a purported tower site agreement in December 1991 from Mid-Ohio Communications, Inc. A December 1991 letter from Mid-Ohio states in pertinent part that it is "willing to negotiate" and has an "intent to negotiate" with WII as to use of its transmitting tower and facilities.

In an April 13, 1994, submission, WII disclosed a letter from Mid-Ohio, dated March 2, 1994. Therein, Mid-Ohio confirmed that its December 1991 letter was only a "willingness to negotiate" as to a "possible" lease of the tower site. Thus, under long-established Commission policy, WII never had "reasonable assurance" of Mid-Ohio's tower site. Progressive Communications, Inc., 3 FCC Rcd 5758, 5759, para. 9 (Rev. Bd. 1988), "reasonable assurance" of the availability of a tower site requires more than a vague "willingness to deal" on the part of the site owner.

In its opposition, WII contends that it had a "meeting of the minds" with Mid-Ohio and a "firm" understanding as to availability of the site. However, WII ignores that the March 1994 letter from Mid-Ohio confirms that in December 1991 it was only willing to deal with it in the future and did not have a firm agreement with it. This letter is of decisional significance because it is a candid and unrehearsed characterization by Mid-Ohio of what it understood its relationship with WII was --- nothing more than a willingness to deal.

WII suggests that, merely because Mid-Ohio recently sold its proposed tower site, it does not follow that it did have "reasonable assurance" in December 1991. However, ORA never made this contention. Rather, it only noted that Mid-Ohio's characterization of its past relationship with WII arose in the context of its recent sale of the tower site.

It appears that WII is making "straw man" arguments in order to confuse and to divert attention from the real issue --- Mid-Ohio has now candidly and unquestionably stated what its actual relationship with WII was. That relationship did not met the Commission's test for "reasonable assurance."

WHEREFORE, in view of the foregoing, ORA requests that a tower site qualifications issue be specified against WII based upon the fact that it never had "reasonable assurance" of a tower site from Mid-Ohio.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 

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May 11, 1994

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 11th day of May, 1994, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of WII" to the following:

Joseph A. Marino, Chairman*
Review Board
Federal Communications Commission
Room 211
2000 L Street, N.W.
Washington, D.C. 20554

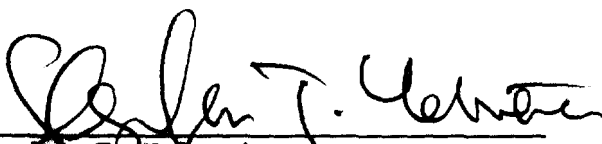
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*Hand Delivery